IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3291 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DIVISIONAL CONTROLLER

Versus

BHADUBHAI ODHAVJI VYAS

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Appearance:

MR KN RAVAL for Petitioner

MR PM THAKKAR for Respondent No. 1

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CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 04/08/2000

ORAL JUDGEMENT

#. By means of filing this petition under Article 226 of the Constitution, the Divisional Controller of Gujarat State Road Transport Corporation, Bhavnagar has challenged legality of award dated July 20, 1987 rendered by the Presiding Officer, Labour Court, Rajkot in

Ref.(ICR) No.229/83 by which the petitioner is directed to reinstate the respondent in service to his original post with continuity of service and full back wages.

#. The respondent was employed as Conductor in G.S.R.T.Corporation. On February 15, 1981 he was on duty in the bus going from Sankheshwar to Bhavnagar. The bus was checked at Paliyad and it was found that the respondent had reissued two used tickets. A departmental inquiry was conducted against him, and at the conclusion of the same he was dismissed from the service by an order dated August 12, 1981. He, therefore, raised an industrial dispute, which was referred to the Presiding Officer, Labour Court, Rajkot for adjudication. On appreciation of documentary evidence such as way bill, etc., the Labour Court deduced that the misconduct of reissuing tickets was not proved. It was also found by the Labour Court that the respondent was not gainfully employed after his dismissal from the service. Under the circumstances, by the impugned award the Presiding Officer of the Labour Court, Rajkot has directed the petitioner to reinstate the respondent to his original post with continuity of service and full back wages giving rise to the present petition.

#. Learned Counsel for the petitioner submitted that, in view of the fact that misconduct was admitted by the respondent before the Inquiry Officer, the finding recorded by the Labour Court to the effect that misconduct is not proved should be set-aside. Learned Counsel for the petitioner emphasized that, in any view of the matter, grant of full back wages is not justified and therefore that part of the award should be suitably modified.

#. Mrs.Sangita Pahwa, learned counsel for the respondent pleaded that the finding recorded by the Labour Court to the effect that misconduct of reissuing tickets is not proved, is based on appreciation of evidence and the same should not be interfered with by the High Court in the present petition which is in essence filed under Article 227 of the Constitution. What was emphasized by the learned counsel for the respondent was that, the respondent was not gainfully employed after his dismissal from the service, and therefore the direction given by the Labour Court, Rajkot to the petitioner to pay back wages should be upheld.

#. I have heard the learned counsels for the parties and considered the documents on record. Though the petition is filed under Article 226 of the Constitution,

in fact it challenges the award of the Labour Court, Rajkot and therefore for all practical purpose the petition will have to be treated as if filed under Article 227 of the Constitution. The scope of interference in a petition filed under Article 227 of the Constitution is very limited in view of the decision of the Supreme Court rendered in case of Mohd. Yunus vs. Mohd. Mustaqim AIR 1984 SC 38. The Labour Court, on appreciation of documentary evidence has come to the conclusion that the so-called admissions of the respondent regarding his misconduct were against the documentary evidence and he had made admissions without understanding implications thereof. The Labour Court has, in terms, held that the misconduct of reissuing tickets is not proved. This finding is based on appreciation of evidence and is not liable to be interfered with in a petition filed under Article 227 of the Constitution. So far as the back wages are concerned, the Labour Court has held that the respondent was not gainfully employed after his dismissal. This finding is not challenged by the petitioner in the present petition. As the misconduct of reissuing the tickets was not proved and as the respondent was not gainfully employed after his dismissal from the service, I am of the opinion that the Labour Court was justified in directing the petitioner to reinstate the respondent to his original post with continuity of service and full back wages. No ground is made out to interfere with the impugned award and the petition is liable to be dismissed.

#. For the foregoing reasons, the petition fails and dismissed. Rule is discharged with no order as to costs.

#. From the record of the case, it appears that in Civil Application No.1714/88 the Court had directed the petitioner to calculate the back wages and deposit the same in a separate account and allow interest thereon at the rate of 11 percent per annum subject to the final orders that may be passed by the court in the petition. As the petition is dismissed the amount deposited with interest is ordered to be paid to the respondent workman as early as possible and preferably within four weeks from the date of receipt of the writ.

(J.M.Panchal, J.)

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